

PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference 112803/BAL	FOR FURTHER ACTION	See Notification of Transmittal of International Preliminary Examination Report (Form PCT/IPEA/416).
International Application No. PCT/AU03/00016	International Filing Date (day/month/year) 9 January 2003	Priority Date (day/month/year) 10 January 2002
International Patent Classification (IPC) or national classification and IPC Int. Cl. ⁷ B65D 43/06, 47/06		
Applicant OWENS-ILLINOIS CLOSURE INC et al		

1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.

2. This REPORT consists of a total of 4 sheets, including this cover sheet.

☐ This report is also accompanied by ANNEXES, i.e., sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).

These annexes consist of a total of sheet(s).

3. This report contains indications relating to the following items:

- I ☒ Basis of the report
- II ☐ Priority
- III ☐ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- IV ☒ Lack of unity of invention
- V ☒ Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- VI ☐ Certain documents cited
- VII ☐ Certain defects in the international application
- VIII ☐ Certain observations on the international application

Date of submission of the demand 18 March 2003	Date of completion of the report 28 May 2003
Name and mailing address of the IPEA/AU AUSTRALIAN PATENT OFFICE PO BOX 200, WODEN ACT 2606, AUSTRALIA E-mail address: pct@ipaaustralia.gov.au Facsimile No. (02) 6285 3929	Authorized Officer A. ALI Telephone No. (02) 6283 2607

I. Basis of the report**1. With regard to the elements of the international application:***

- ☒ the international application as originally filed.
- ☐ the description, pages , as originally filed,
 pages , filed with the demand,
 pages , received on with the letter of
- ☐ the claims, pages , as originally filed,
 pages , as amended (together with any statement) under Article 19,
 pages , filed with the demand,
 pages , received on with the letter of
- ☐ the drawings, pages , as originally filed,
 pages , filed with the demand,
 pages , received on with the letter of
- ☐ the sequence listing part of the description:
 pages , as originally filed
 pages , filed with the demand
 pages , received on with the letter of

2. With regard to the language, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language which is:

- ☐ the language of a translation furnished for the purposes of international search (under Rule 23.1(b)).
- ☐ the language of publication of the international application (under Rule 48.3(b)).
- ☐ the language of the translation furnished for the purposes of international preliminary examination (under Rules 55.2 and/or 55.3).

3. With regard to any nucleotide and/or amino acid sequence disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished

4. ☐ The amendments have resulted in the cancellation of:

- ☐ the description, pages
- ☐ the claims, Nos.
- ☐ the drawings, sheets/fig.

5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).**

* Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17).

** Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report

IV. Lack of unity of invention

1. In response to the invitation to restrict or pay additional fees the applicant has:

- ☐ restricted the claims.
- ☐ paid additional fees.
- ☐ paid additional fees under protest.
- ☐ neither restricted nor paid additional fees.

2. ☒ This Authority found that the requirement of unity of invention is not complied with and chose, according to Rule 68.1, not to invite the applicant to restrict or pay additional fees.

3. This Authority considers that the requirement of unity of invention in accordance with Rules 13.1, 13.2 and 13.3 is

- ☐ complied with.
- ☒ not complied with for the following reasons:

1. Claims 1-25, 32, 34 and 36 are directed to a closure suitable for mounting onto a container. It is considered that an outer surface of the spout having at least one outwardly extending protuberance (40), wherein the sealing member (59) rides up over said at least one protuberance (40) without catching, whereby the side edges of adjacent protuberances (40) define therebetween a channel that facilitates release of gases from within the container comprises a first "special technical feature". (Referred to as the first invention at page 3, line 31)
2. Claims 26-31, 33, 35 and 37 are directed to a closure suitable for mounting onto a container. It is considered that an outer surface of the spout having at least one outwardly extending protuberance (40) and the sealing rib (54) by being folded back against the inner surface so that it bears strongly against at least the outside surface of the plug (36) and so forming a seal between the top cap (50) and the plug (36) when the plug (36) is within the opening comprise a second "special technical feature". (Referred to as the second invention at page 12, line 20)

Since these groups of claims do not share any of the special technical features identified, a technical relationship between the inventions does not exist. Accordingly the claims do not relate to one invention or to a single inventive concept, a priori.

The subject matter of the two sets of claims is such that a single search covering all claims was possible.

4. Consequently, the following parts of the international application were the subject of international preliminary examination in establishing this report:

- ☒ all parts.
- ☐ the parts relating to claims Nos.

V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**1. Statement**

Novelty (N)	Claims 1-37	YES
	Claims	NO
Inventive step (IS)	Claims 1-37	YES
	Claims	NO
Industrial applicability (IA)	Claims 1-37	YES
	Claims	NO

2. Citations and explanations (Rule 70.7)**NOVELTY Claims 1-37:**

The invention defined in claims 1-37 is novel, as none of the cited prior art discloses a closure suitable for mounting onto a container including a main closure having a top portion having an aperture, a skirt portion depending downwardly, a sealing rib, a spout extending upwardly, the spout defining a bore that is in fluid communication with the aperture of the top portion, an outer surface of the spout having at least one outwardly extending protuberance, wherein the sealing member rides up over said at least one protuberance so as to at least partially release the seal made by the sealing member with said spout, a plug member mounted to the spout and a top cap as presently defined.

INVENTIVE STEP Claims 1-37:

The subject matter of these claims is not rendered obvious in view of the teachings of any prior art documents taken in combination or in combination with common general knowledge.

INDUSTRIAL APPLICABILITY:

All claims have industrial applicability.